

REMARKS

The Office action dated January 29, 2008, has been fully considered. Please enter the amendments and consider the following remarks presented herein. Reconsideration and/or further prosecution of the application is respectfully requested. Note, no new amendments are made to the claims; rather the clean listing of the claims is provided to clarify the record.

Applicants appreciate the thoughtful examination of the application. The following remarks reference the same numbered paragraphs of the Office action to which they are directed.

Paragraph 3. Claims 1-4, 7-17, and 19-27 are rejected on the grounds of nonstatutory double patenting over claims 1-42 of US Patent 6,714,985, which is assigned to Cisco Technology, Inc., as is the instant application.

Applicants respectfully traverse this rejection, as the Office has failed to establish a *prima facie* proper rejection; and the instant application is not obvious in light of the '985 patent. The Office action compares claim 13 of the '985 application to claim 9 of the instant application.

First, Applicants note that the claims are directed to different subject matter. Claim 13 of the '985 patent is directed to *reassembly of a packet*, while claim 9 of the present application is directed to *resequencing packets*. These are different functions. Additionally, claim 9 of the instant application recites a limitation of a sequence number. Applicants cannot locate the word "sequence" nor phrase "sequence number" in the '985 patent. For at least the reason that the '985 patent neither teaches nor suggests all the claim limitations of representative claim 9 of the instant application, the Office has failed to establish a *prima facie* case of nonstatutory double patenting; and in fact, the claims of the instant application are not obvious over the '985 patent.

For at least these reasons, Applicants respectfully request the nonstatutory double patenting rejections be withdrawn.

Paragraph 4. Claim 9 stands rejected under 35 USC § 102(b) as being anticipated by Nichols et al., Patent Application Publication 2003/0039250. Applicants respectfully traverse the rejection as the Office has failed to establish a *prima facie* rejection.

It is well-established law that the burden is on the Office to initially present a *prima facie* unpatentability (e.g., anticipation, obvious) rejection, before Applicant has any burden of proof of disproving any application of a cited reference against a claim. *In re Warner*, 379 F2d. 1011, 1016, 154 USPQ 173, 177 (C.C.P.A. 1967); *Ex parte Skinner*, 2 USPQ2d 1788, 1788-89 (B.P.A.I. 1986). The MPEP and law is clear that for anticipation, the reference *must teach each and every aspect of the claimed invention* either explicitly or impliedly, and the burden is on the Office to present a *prima facie* case of anticipation. MPEP § 706.02 (emphasis added). Inherent means it *must* occur. The fact that a certain result or characteristic *may* occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. MPEP § 2112 (*emphasis in original*).

In regards to claim 9, the Office fails to present a teach for the limitation of "wherein said identifying the particular queue includes checking that the particular queue does not include a packet with a sequence number subsequent to the particular sequence number in the ordered sequence." The Office cites paragraph [0111] of Nichols et al. There is no teaching of any such action. The use of the phrase "proper sequencing" neither teaches nor suggests this specific limitation, and Applicants make a demand for evidence (as provided for in the MPEP) for such a teaching. (Additionally, the teachings of Nichols et al. are directed to reassembly of a packet, not resequencing, and the claim is directed to resequencing of a packet stream.)

For at least these reasons, the Office has failed to establish a *prima facie* rejection of claim 9. For at least these reasons, Applicants respectfully request the rejection of claim 9 be withdrawn.

Paragraphs 5 et seq. Claims 1-4, 7, 8, 10-17 and 19-27 stand rejected as being obvious under 35 USC § 103(a) by Nichols et al., Patent Application Publication 2003/0039250, in view of Agarwal et al., US Patent 6,819,658.

Paragraphs 5, 6, 7 Claims 10-12 stand rejected as being obvious under 35 USC § 103(a) by Nichols et al., Patent Application Publication 2003/0039250, in view of Agarwal et al., US Patent 6,819,658. Applicants respectfully traverse the rejection of claims 10, 11, and 12, as the Office fails to establish a *prima facie* rejection. First, the rejections rely on the same rejection of their independent claim 9, and are believed to be allowable for at least the same reasons discussed *supra*. Furthermore, Applicants agree with the Office action that the references do not teach all the claim limitations; however, just because the Office action states that Agarwal et al. teaches creating or destroying queues as needed, there is no teaching nor suggestion, nor does the Office present any analysis, for the specific manner recited in the limitations of claim 10. For at least these additional reasons, Applicants respectfully request the rejections of dependent claim 10, 11 and 12 be withdrawn, and these claims be allowed.

Paragraphs 8-27. The Office action rejects independent claim 1 and its dependent claim 2-4 and 7-8; independent claim 13 and its dependent claims 14-19; and independent claim 20 and its dependent claims 21-27 as being obvious under 35 USC § 103(a) by Nichols et al., Patent Application Publication 2003/0039250, in view of Agarwal et al., US Patent 6,819,658.

Each of independent claims 1, 13 and 20 recite a limitation similar to claim 9's limitation of "wherein said identifying the particular queue includes checking that the particular queue does not include a packet with a sequence number subsequent to the particular sequence number in the ordered sequence" as discussed in relation to paragraph 4. Again, the Office cites and relies on paragraph [0111] of Nichols et al. There is no teaching of any such action. The use of the phrase "proper sequencing" neither teaches nor suggests this specific limitation, and Applicants make a demand for evidence (as provided for in the MPEP) for such a teaching.

For at least these reasons, the Office action has failed to establish a *prima facie* rejection of any pending claim. Moreover, as the prior art of record neither teaches nor suggests all

limitations of any pending claim, all claims are believed to be allowable over the prior art of record. Also, if the Office action complies with MPEP § 706 and 37 CFR 1.104(c)(2), then the Office cited the best prior art references available. As the prior art of record neither teaches nor suggests all the claim limitations of the pending claims, then all pending claims are believed to be allowable over the best prior art available, and Applicants request the claims be allowed and the application pass to issuance.

Final Remarks. In view of the above remarks and for at least the reasons presented herein, all pending claims are believed to be allowable over all prior art of record, the application is considered in good and proper form for allowance, and the Office is respectfully requested to issue a timely Notice of allowance in this case. Applicant requests any and all rejections and/or objections be withdrawn. If, in the opinion of the Office, a telephone conference would expedite the prosecution of the subject application, the Office is invited to call the undersigned attorney, as Applicants are open to discussing, considering, and resolving issues.

Applicants request a two-month extension of time is required. Should a different extension of time be deemed appropriate, Applicants hereby petition for such deemed extension of time. Applicants further authorize the charging of Deposit Account No. 501430 for any fees that may be due in connection with this paper (e.g., claim fees, extension of time fees) as required in addition to the payment made herewith using EFS-Web.

Respectfully submitted,
The Law Office of Kirk D. Williams



Date: June 29, 2008

By

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